

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JERMALL BUTLER,)	
Petitioner,)	
)	
v.)	C.A. NO. 05-10608-MLW
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

ORDER

March 13, 2008

In his Motion Under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence, Jermall Butler ("Butler") alleges, "Prior to [Butler's] sentencing, he told his counsel... that if [Butler] was unsuccessful in receiving a two-level decrease for acceptance of responsibility, he wanted to appeal. Immediately following his June 1st sentencing, [Butler] instructed [his counsel] to file an appeal. [Counsel] assured [Butler] that he would... [but] did not." Butler Memo. in Support at 2. The court must decide whether these allegations are sufficient to justify an evidentiary hearing. See, e.g., David v. United States, 134 F.3d 470, 477-78 (1st Cir. 1998). If he specifically instructed his counsel to appeal but counsel did not do so, Butler is entitled to a reinstatement of his appeal. See Peguero v. United States, 526 U.S. 23, 28 (1999).

The other contentions in Butler's motion are unmeritorious for the reasons stated in the Government's Response to Petitioner's § 2255 Motion (Docket No. 3).

The court is informed that Butler is on supervised release. In the circumstances, he may not wish to pursue this matter.

Therefore, it is hereby ORDERED that, by March 25, 2008, Butler shall file a statement indicating whether he continues to seek an evidentiary hearing on the allegations described above, or whether the petition may be dismissed.

/s/ Mark L. Wolf
UNITED STATES DISTRICT JUDGE